

AMENDED IN ASSEMBLY AUGUST 31, 2007

AMENDED IN SENATE MAY 22, 2007

AMENDED IN SENATE MARCH 27, 2007

SENATE BILL

No. 1022

Introduced by Senator Steinberg

February 23, 2007

An act to amend Sections 11169 and 11170 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1022, as amended, Steinberg. Child abuse: central index.

Existing law requires the Department of Justice to maintain the Child Abuse Central Index as a repository for reports regarding suspected child abuse or severe neglect. *Existing law further requires the Department of Justice to make relevant information contained in the index available to specified law enforcement agencies, county welfare departments, and other agencies that are conducting a child abuse investigation.*

This bill would require the Department of Justice to make available to a Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program, or a volunteer position as a Court Appointed Special Advocate, information contained in the index regarding known or suspected child abuse by the applicant. This bill would also require the department to remove information relating to a person ~~who's~~ whose name is listed in the Child Abuse Central Index as a suspect in a child abuse or neglect investigation due to an incident that occurred when the person was under 18 years of age if the incident did not result in a delinquency

adjudication or criminal conviction, and he or she makes a notarized written request to the department to have his or her name removed as a suspect with respect to that incident, as specified.

Existing law also ~~requires~~ *mandates that* specified persons to forward reports of suspected child abuse to the Department of Justice and requires the department to notify the ~~person specified as the~~ suspected abuser that he or she has been reported to the Child Abuse Central Index.

This bill would, ~~in addition,~~ *additionally* require the department, *if the known or suspected child abuser is a minor*, to notify the *minor's* current caregiver, ~~the parents or legal guardian, the attorney, and the guardian ad litem of a minor if the minor is the suspected abuser.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11169 of the Penal Code is amended to
2 read:

3 11169. (a) An agency specified in Section 11165.9 shall
4 forward to the Department of Justice a report in writing of every
5 case it investigates of known or suspected child abuse or severe
6 neglect which is determined not to be unfounded, other than cases
7 coming within subdivision (b) of Section 11165.2. An agency shall
8 not forward a report to the Department of Justice unless it has
9 conducted an active investigation and determined that the report
10 is not unfounded, as defined in Section 11165.12. If a report has
11 previously been filed which subsequently proves to be unfounded,
12 the Department of Justice shall be notified in writing of that fact
13 and shall not retain the report. The reports required by this section
14 shall be in a form approved by the Department of Justice and may
15 be sent by fax or electronic transmission. An agency specified in
16 Section 11165.9 receiving a written report from another agency
17 specified in Section 11165.9 shall not send that report to the
18 Department of Justice.

19 (b) At the time an agency specified in Section 11165.9 forwards
20 a report in writing to the Department of Justice pursuant to
21 subdivision (a), the agency shall also notify in writing the known
22 or suspected child abuser that he or she has been reported to the
23 Child Abuse Central Index. If the known or suspected child abuser

1 is a minor, the agency shall notify the minor's current caregiver,
2 the minor's parents or legal guardian, the minor's attorney, and
3 the minor's guardian ad litem, if any. The notice required by this
4 section shall be in a form approved by the Department of Justice.
5 The requirements of this subdivision shall apply with respect to
6 reports forwarded to the department on or after the date on which
7 this subdivision becomes operative.

8 (c) Agencies shall retain child abuse or neglect investigative
9 reports that result in a report filed with the Department of Justice
10 pursuant to subdivision (a) for the same period of time that the
11 information is required to be maintained on the Child Abuse
12 Central Index pursuant to this section and subdivision (a) of Section
13 11170. Nothing in this section precludes an agency from retaining
14 the reports for a longer period of time if required by law.

15 (d) The immunity provisions of Section 11172 shall not apply
16 to the submission of a report by an agency pursuant to this section.
17 However, nothing in this section shall be construed to alter or
18 diminish any other immunity provisions of state or federal law.

19 SEC. 2. Section 11170 of the Penal Code is amended to read:

20 11170. (a) (1) The Department of Justice shall maintain an
21 index of all reports of child abuse and severe neglect submitted
22 pursuant to Section 11169. The index shall be continually updated
23 by the department and shall not contain any reports that are
24 determined to be unfounded. The department may adopt rules
25 governing recordkeeping and reporting pursuant to this article.

26 (2) The department shall act only as a repository of reports of
27 suspected child abuse and severe neglect to be maintained in the
28 Child Abuse Central Index pursuant to paragraph (1). The
29 submitting agencies are responsible for the accuracy, completeness,
30 and retention of the reports described in this section. The
31 department shall be responsible for ensuring that the Child Abuse
32 Central Index accurately reflects the report it receives from the
33 submitting agency.

34 (3) Information from an inconclusive or unsubstantiated report
35 filed pursuant to subdivision (a) of Section 11169 shall be deleted
36 from the Child Abuse Central Index after 10 years if no subsequent
37 report concerning the same suspected child abuser is received
38 within that time period. If a subsequent report is received within
39 that 10-year period, information from any prior report, as well as
40 any subsequently filed report, shall be maintained on the Child

1 Abuse Central Index for a period of 10 years from the time the
2 most recent report is received by the department.

3 (b) (1) The Department of Justice shall immediately notify an
4 agency that submits a report pursuant to Section 11169, or a
5 prosecutor who requests notification, of any information maintained
6 pursuant to subdivision (a) that is relevant to the known or
7 suspected instance of child abuse or severe neglect reported by the
8 agency. The agency shall make that information available to the
9 reporting medical practitioner, child custodian, guardian ad litem
10 appointed under Section 326, or counsel appointed under Section
11 317 or 318 of the Welfare and Institutions Code, or the appropriate
12 licensing agency, if he or she is treating or investigating a case of
13 known or suspected child abuse or severe neglect.

14 (2) When a report is made pursuant to subdivision (a) of Section
15 11166, or Section 11166.05, the investigating agency, upon
16 completion of the investigation or after there has been a final
17 disposition in the matter, shall inform the person required or
18 authorized to report of the results of the investigation and of any
19 action the agency is taking with regard to the child or family.

20 (3) The Department of Justice shall make available to a law
21 enforcement agency, county welfare department, or county
22 probation department that is conducting a child abuse investigation
23 relevant information contained in the index.

24 (4) The department shall make available to the State Department
25 of Social Services or to any county licensing agency that has
26 contracted with the state for the performance of licensing duties
27 information regarding a known or suspected child abuser
28 maintained pursuant to this section and subdivision (a) of Section
29 11169 concerning any person who is an applicant for licensure or
30 any adult who resides or is employed in the home of an applicant
31 for licensure or who is an applicant for employment in a position
32 having supervisory or disciplinary power over a child or children,
33 or who will provide 24-hour care for a child or children in a
34 residential home or facility, pursuant to Section 1522.1 or 1596.877
35 of the Health and Safety Code, or Section 8714, 8802, 8912, or
36 9000 of the Family Code.

37 (5) *The Department of Justice shall make available to a Court*
38 *Appointed Special Advocate program that is conducting a*
39 *background investigation of an applicant seeking employment with*
40 *the program or a volunteer position as a Court Appointed Special*

1 *Advocate, as defined in Section 101 of the Welfare and Institutions*
2 *Code, information contained in the index regarding known or*
3 *suspected child abuse by the applicant.*

4 ~~(5)~~

5 (6) For purposes of child death review, the Department of Justice
6 shall make available to the chairperson, or the chairperson's
7 designee, for each county child death review team, or the State
8 Child Death Review Council, information maintained in the Child
9 Abuse Central Index pursuant to subdivision (a) of Section 11170
10 relating to the death of one or more children and any prior child
11 abuse or neglect investigation reports maintained involving the
12 same victims, siblings, or suspects. Local child death review teams
13 may share any relevant information regarding case reviews
14 involving child death with other child death review teams.

15 ~~(6)~~

16 (7) The department shall make available to investigative
17 agencies or probation officers, or court investigators acting
18 pursuant to Section 1513 of the Probate Code, responsible for
19 placing children or assessing the possible placement of children
20 pursuant to Article 6 (commencing with Section 300), Article 7
21 (commencing with Section 305), Article 10 (commencing with
22 Section 360), or Article 14 (commencing with Section 601) of
23 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
24 Code, Article 2 (commencing with Section 1510) or Article 3
25 (commencing with Section 1540) of Chapter 1 of Part 2 of Division
26 4 of the Probate Code, information regarding a known or suspected
27 child abuser contained in the index concerning any adult residing
28 in the home where the child may be placed, when this information
29 is requested for purposes of ensuring that the placement is in the
30 best interests of the child. Upon receipt of relevant information
31 concerning child abuse or neglect investigation reports contained
32 in the index from the Department of Justice pursuant to this
33 subdivision, the agency or court investigator shall notify, in writing,
34 the person listed in the Child Abuse Central Index that he or she
35 is in the index. The notification shall include the name of the
36 reporting agency and the date of the report.

37 ~~(7)~~

38 (8) The Department of Justice shall make available to a
39 government agency conducting a background investigation
40 pursuant to Section 1031 of the Government Code of an applicant

1 seeking employment as a peace officer, as defined in Section 830,
2 information regarding a known or suspected child abuser
3 maintained pursuant to this section concerning the applicant.

4 ~~(8)~~

5 (9) (A) Persons or agencies, as specified in subdivision (b), if
6 investigating a case of known or suspected child abuse or neglect,
7 or the State Department of Social Services or any county licensing
8 agency pursuant to paragraph (4), *or a Court Appointed Special*
9 *Advocate program conducting a background investigation for*
10 *employment or volunteer candidates pursuant to paragraph (5),*
11 *or an investigative agency, probation officer, or court investigator*
12 *responsible for placing children or assessing the possible placement*
13 *of children pursuant to paragraph-*~~(6)~~ *(7), or a government agency*
14 *conducting a background investigation of an applicant seeking*
15 *employment as a peace officer pursuant to paragraph-*~~(7)~~ *(8), to*
16 *whom disclosure of any information maintained pursuant to*
17 *subdivision (a) is authorized, are responsible for obtaining the*
18 *original investigative report from the reporting agency, and for*
19 *drawing independent conclusions regarding the quality of the*
20 *evidence disclosed, and its sufficiency for making decisions*
21 *regarding investigation, prosecution, licensing, placement of a*
22 *child, employment or volunteer positions with a Court Appointed*
23 *Special Advocate program, or employment as a peace officer.*

24 (B) If Child Abuse Central Index information is requested by
25 an agency for the temporary placement of a child in an emergency
26 situation pursuant to Article 7 (commencing with Section 305) of
27 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
28 Code, the department is exempt from the requirements of Section
29 1798.18 of the Civil Code if compliance would cause a delay in
30 providing an expedited response to the agency's inquiry and if
31 further delay in placement may be detrimental to the child.

32 ~~(9)~~

33 (10) (A) Whenever information contained in the Department
34 of Justice files is furnished as the result of an application for
35 employment or licensing pursuant to paragraph (4)-~~or (7)~~, (5), *or*
36 (8), the Department of Justice may charge the person or entity
37 making the request a fee. The fee shall not exceed the reasonable
38 costs to the department of providing the information. The only
39 increase shall be at a rate not to exceed the legislatively approved

cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars (\$15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the *California* DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that

1 he or she is in the index. The notification shall include the location
2 of the original investigative report and the submitting agency. The
3 notification shall be submitted to the person listed at the same time
4 that all other parties are notified of the information, and no later
5 than the actual judicial proceeding that determines placement.

6 If Child Abuse Central Index information is requested by an
7 agency for the placement of a child with a responsible relative in
8 an emergency situation pursuant to Article 7 (commencing with
9 Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare
10 and Institutions Code, the department is exempt from the
11 requirements of Section 1798.18 of the Civil Code if compliance
12 would cause a delay in providing an expedited response to the
13 child protective agency's inquiry and if further delay in placement
14 may be detrimental to the child.

15 (d) The department shall make available any information
16 maintained pursuant to subdivision (a) to out-of-state law
17 enforcement agencies conducting investigations of known or
18 suspected child abuse or neglect only when an agency makes the
19 request for information in writing and on official letterhead,
20 identifying the suspected abuser or victim by name. The request
21 shall be signed by the department supervisor of the requesting law
22 enforcement agency. The written requests shall cite the out-of-state
23 statute or interstate compact provision that requires that the
24 information contained within these reports shall be disclosed only
25 to law enforcement, prosecutorial entities, or multidisciplinary
26 investigative teams, and shall cite the criminal penalties for
27 unlawful disclosure of any confidential information provided by
28 the requesting state or the applicable interstate compact provision.
29 In the absence of a specified out-of-state statute or interstate
30 compact provision that requires that the information contained
31 within these reports shall be disclosed only to law enforcement,
32 prosecutorial entities, or multidisciplinary investigative teams, and
33 criminal penalties equivalent to the penalties in California for
34 unlawful disclosure, access shall be denied.

35 (e) (1) Any person may determine if he or she is listed in the
36 Child Abuse Central Index by making a request in writing to the
37 Department of Justice. The request shall be notarized and include
38 the person's name, address, date of birth, and either a social
39 security number or a California identification number. Upon receipt
40 of a notarized request, the Department of Justice shall make

1 available to the requesting person information identifying the date
2 of the report and the submitting agency. The requesting person is
3 responsible for obtaining the investigative report from the
4 submitting agency pursuant to paragraph (11) of subdivision (b)
5 of Section 11167.5.

6 (2) No person or agency shall require or request another person
7 to furnish a copy of a record concerning himself or herself, or
8 notification that a record concerning himself or herself exists or
9 does not exist, pursuant to paragraph (1) of this subdivision.

10 (f) If a person is listed in the Child Abuse Central Index only
11 as a victim of child abuse or neglect, and that person is 18 years
12 of age or older, that person may have his or her name removed
13 from the index by making a written request to the Department of
14 Justice. The request shall be notarized and include the person's
15 name, address, social security number, and date of birth.

16 (g) (1) If a person is listed in the Child Abuse Central Index
17 as a suspect in a child abuse or neglect investigation due to an
18 incident that occurred when the person was under the age of 18
19 years, and the incident did not result in a delinquency adjudication
20 or criminal conviction, that person may make a written request to
21 the Department of Justice to have his or her name removed from
22 the index as a suspect with respect to that incident. The request
23 shall be notarized and include the person's name, address, social
24 security number, and date of birth. Upon receipt of the request,
25 the department shall inquire of the submitting agency whether the
26 incident resulted in a delinquency adjudication or criminal
27 conviction. Unless the submitting agency responds to the
28 department in the affirmative within 30 days, the department shall
29 remove the person's name from the index as the person suspected
30 in that incident.

31 (2) If a person is listed in the index as a suspect with respect to
32 more than one reported incident, the process set forth in paragraph
33 (1) shall be followed with respect to each incident for which the
34 person wishes to have his or her name removed from the index.